

**Before the State of South Carolina
Department of Insurance**

In the Matter of:)	
)	
The Proposed Acquisition of Kanawha Insurance)	Docket No. 2004-10
Company, a South Carolina domestic insurer by)	Decision and Order
KMG America Corporation, a Virginia Corporation)	
_____)	

This matter comes before me pursuant to the Form "A" Statement regarding the Acquisition of Control of or Merger with a Domestic Insurer ("the Form A") filed by KMG America Corporation ("the Applicant"), in accordance with South Carolina's Insurance Holding Company Regulatory Act. See S.C. Code Ann. § 38-21-70 (Supp. 2003) and 25A S.C. Code Ann. Reg. 69-14 (Supp. 2003). South Carolina law requires the approval of the Director of Insurance or his designee, after a public hearing, of any merger or acquisition of control of a South Carolina domestic insurer unless after a public hearing he finds that one of the conditions set forth in S.C. Code Ann. § 38-21-90 (Supp. 2003) exists. The public hearing on the above-referenced acquisition was waived. Moreover, the conditions set forth in § 38-21-90 do not appear to exist. Accordingly, the above-captioned acquisition is hereby approved subject to the conditions set forth below.

STATEMENT OF THE CASE

The Form A provided notice of the Applicant's intent to acquire control of Kanawha Insurance Company, Inc. ("Kanawha"), a South Carolina domestic insurer and its subsidiaries. The Applicant proposes to acquire 100% of the issued and outstanding shares of capital stock of Kanawha pursuant to a Stock Purchase Agreement by, and among the shareholders and option holders of Kanawha and KMG America Corporation. No public hearing was held in this matter. The Department conducted a due diligence review of the proposed transaction. Any issues concerning the Form A application were satisfactorily addressed by the parties.

STATUTORY STANDARD OF REVIEW

S.C. Code Ann. § 38-21-10(2) of the South Carolina Code of Laws creates a presumption of control whenever an acquiring entity would directly or indirectly own ten percent (10%) or more of the voting securities of a regulated entity. S.C. Code Ann. § 38-21-60 prohibits any person from acquiring control of a domestic insurer without first having filed information required pursuant to the Insurance Holding Company Regulatory Act and having obtained approval for that acquisition from the Director of Insurance or his designee under S.C. Code Ann. § 38-21-90. S.C. Code Ann. § 38-21-90 of the Insurance Holding Regulatory Company Act specifically requires the approval of the proposed acquisition of control of the South Carolina domestic insurer *unless* the Director of Insurance or his designee determines, after a public hearing, that:

- (1) After the change of control the domestic insurer is not able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.
- (2) The effect of the merger or other acquisition of control would substantially lessen competition in insurance in this State or tend to create a monopoly. In applying the competitive standard in this item:
 - (a) The information requirements and standards of Section 38-21-125(C) and (D) apply.
 - (b) The merger or other acquisition must not be approved if the Director or his designee finds that at least one of the situations in Section 38-21-125(D) exists.
 - (c) The Director or his designee may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time.
- (3) The financial condition of the acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders.
- (4) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with a person or to make another material change in its business or corporate structure or management are unfair and unreasonable to the insurer's policyholders and not in the public interest.
- (5) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it is not in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.
- (6) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

Therefore, the Applicant must prove by a preponderance of the evidence that those factors do not exist.

FINDINGS OF FACT

Having considered the Form A, the findings of the review, and all supplemental materials filed in this matter, I find, by a preponderance of the evidence, the following as to the requested approval of the acquisition of Kanawha.

1. A Form "A" application was filed with the Department, on or about, August 4, 2004.

2. Kanawha is a South Carolina domestic insurer jointly owned by the Close family (collectively the shareholders) and Stanley D. Johnson and SDJ Partners, LP. (Collectively the option holders).
3. The Applicant was organized in January 2004 for the purpose of acquiring the capital stock of Kanawha and acting as a holding company.
4. The Applicant proposes to acquire 100% stock ownership in Kanawha for an aggregate purchase price of approximately \$150,000,000. The purchase price is subject to adjustments based on Kanawha's net worth as of the last day of the quarter ending immediately prior to the closing date in accordance with the Stock Purchase Agreement. Moreover, KMG America's obligation and the selling shareholders/option holders obligation to close the Kanawha acquisition are conditioned upon KMG America's obtaining adequate funding through an Initial Public Offering (IPO).
5. Kanawha will continue its operations in South Carolina.
6. Based upon materials submitted by the Applicant, none of the conditions provided for under S. C. Code Ann. § 38-21-90(A) existed or applied with respect to the proposed acquisition.
7. The Applicant represented that Kanawha would continue to comply with all requirements for licensure and would maintain its original books and records in this State.
8. The Applicant asserts in the Form A that it has no present plans to liquidate Kanawha or to sell its assets to any person. The Form A also states that the Applicant does not have any plans to cause Kanawha to merge or consolidate or transfer any of its assets with any other company. No management changes will be made in Kanawha other than new appointments to the Board of Directors. Kanawha will maintain its corporate identity and will operate as a South Carolina domestic insurer.
9. The biographical affidavits provided for the executive officers and directors of the Applicant were included in the Form A. That information indicates that the Applicant's proposed management team has management experience and further indicates that those individuals do not have a history of criminal convictions.
10. Kanawha's June 30, 2004 statutory quarterly statement shows total assets of US \$507,287,571, total liabilities of US \$442,186,095, total capital and surplus of US \$65,101,476.

CONCLUSIONS OF LAW

I have considered the statutory requirements for approval of a change of control in accordance with the applicable provisions of the South Carolina Code and make the following conclusions of law:

1. Upon completion of the proposed acquisition, Kanawha will continue to be able to satisfy the requirements for the issuance of a license for which it is presently licensed as required by § 38-21-90 (A)(1).
2. This acquisition does not appear to substantially lessen competition or create a monopoly, which is prohibited by § 38-21-90 (A)(2).
3. The Applicant's financial condition will not jeopardize the financial stability of Kanawha or prejudice the interest of its policyholders pursuant to the provisions of § 38-21-90 (A)(3).
4. The transaction is neither unreasonable for policyholders nor contrary to the public interest pursuant to the provisions of § 38-21-90(A)(4).
5. The Form A indicates that the Applicant will bring some experience and expertise to the transaction. It also appears that the conditions of § 38-21-90(A)(5) would not occur because the experience and integrity of the persons who would control the operation of Accident are such that it would be in the interest of the policyholders of Kanawha and the public to permit the acquisition.

The proposed acquisition is not likely to be hazardous to those buying insurance as prohibited by § 38-21-90(A)(6). Any existing certificates of coverage will continue in force and effect.

CONCLUSION

In view of the foregoing findings of fact and conclusions of law, the criteria established under S.C. Code Ann. § 38-21-90 (Supp. 2003) for approval of an acquisition of control or merger of a domestic insurer have been met. Accordingly, it is ordered that the Form A application to acquire direct control of Kanawha is APPROVED subject to the following condition. The Applicant must:

Comply with all applicable provisions of South Carolina law to maintain the domestic licensure of Kanawha, including maintaining its original books and records within the State of South Carolina;

And it is so ordered.


Gwendolyn Fuller McGriff
Deputy Director

Columbia, South Carolina
September 17, 2004